

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In the matter of)
)
CORAM HEALTHCARE CORP.) Case No. 00-3299
and CORAM, INC.) Through 00-3300 (MFW)
)
Debtors.)

Bankruptcy Courtroom
Room No. 2 - Sixth Floor
Marine Midland Plaza
824 Market Street Mall
Wilmington, Delaware

Friday, December 15, 2000
9:07 a.m.

BEFORE: THE HONORABLE MARY F. WALRATH,
United States Bankruptcy Judge

TRANSCRIPT OF PROCEEDINGS

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



WILCOX & FETZER LTD.

Registered Professional Reporters

COPY

X408

Crowley - Cross

11

1 Q. Mr. Crowley, let me try to ask the question
2 again. Not your expectation, but in the course of that
3 call did you or anyone else, to your knowledge, say, this
4 is only for employees of Coram?

5 A. I don't know.

6 Q. Thank you. Are you aware of any arrangements
7 that were made to limit access to that call, as, for
8 example, by requiring a pass code in order to listen on
9 the call?

10 A. The fact is those calls -- that call was
11 announced to employees with a call-in number for
12 employees.

13 Q. Were you through, sir?

14 A. Yes.

15 Q. And that call-in number didn't have a pass code
16 or a password attached to it, to your knowledge, did it?

17 A. I don't know.

18 Q. Let's then move on, try and explore your
19 relationship with both Cerberus and Coram. I'd like to
20 focus first on your relationship with Cerberus, which I
21 understand it began in the first half of 1999. Is that
22 correct?

23 A. My relationship in what sense?

24 Q. Your relationship in providing either consultant



WILCOX & FETZER LTD.
Registered Professional Reporters

Crowley - Cross

12

1 or any other services to Cerberus.

2 A. I had informal workings with them that may have
3 preceded that. I don't recall the dates.

4 Q. Is it correct to say prior to June of 1999 or
5 July of 1999 that you were charging Cerberus and Feinberg
6 \$10,000 a day plus expenses and staff for your consulting
7 services?

8 A. Yes.

9 Q. And the concept at that time between you and
10 Cerberus and Feinberg was that you were sort of a CEO of
11 CEOs. Correct?

12 A. In July of 1999 we came to a discussion in which
13 I agreed to serve for Cerberus as a CEO of CEOs and to
14 assist Cerberus in other capacities as I could.

15 Q. At about that time Cerberus was eating up all
16 your time on their projects, wasn't it?

17 A. No.

18 Q. I'm going to put in front of you a transcript of
19 the deposition that I took on December 7th in
20 Mr. Friedman's office -- they are marked, Your Honor, as
21 Exhibit EC 35 -- and ask you to turn to page 51 and look
22 at line 13, if you will. You're certainly welcome to
23 read the whole answer, but didn't you testify, quote,
24 "They were calling me all the time. Basically were



WILCOX & FETZER LTD.
Registered Professional Reporters

1 eating up all my time on all their projects and companies
2 and advice and counsel, anyway."

3 A. I'm sorry. I misunderstood the page number
4 here.

5 Q. 51.

6 A. I'm not familiar with these documents.

7 Q. It's in the upper right-hand corner.

8 A. Got it.

9 Q. I'm looking at line 13 and 14.

10 A. Generally what I meant by that was that they
11 were --

12 Q. Excuse me, sir. Did you testify to that?

13 A. Those are my words.

14 Q. You want to explain what you meant by it.

15 A. They were calling me quite a bit. My
16 involvement was increasing at an increasing rate. It's
17 not proper to say that they were consuming all of my
18 time.

19 Q. Then why did you say that, sir?

20 A. It was a generalization.

21 Q. In any event, in July you struck a deal with
22 Mr. Feinberg, correct?

23 A. Yes.

24 Q. And that deal was that Cerberus or Feinberg



WILCOX & FETZER LTD.
Registered Professional Reporters

Crowley - Cross

14

1 would pay you \$80,000 a month, plus expenses, plus
2 20 percent of the upside over preferred return on certain
3 companies. Correct?

4 A. \$80,000 a month, plus 20 percent of any gain, if
5 there was one, above a preferred return of 14 percent,
6 plus expenses, compounded annually, is correct.

7 Q. And under that deal that you struck, that was
8 instead of \$10,000 a day, right?

9 A. Yes.

10 Q. Now, under that deal you were to work
11 exclusively for Cerberus, correct?

12 A. Not totally.

13 Q. Would you look, sir, at page 50 of your
14 testimony and at line 7. Look at line 6. I asked you,
15 "Tell me about the alteration."

16 And you said, "I was to work exclusively
17 for Cerberus."

18 Did you give that testimony?

19 A. I'm trying to find your page number. 11?

20 Q. Page 50, line 11.

21 A. I said those words.

22 Q. Did you mean them when you said them?

23 A. Again, they are subject to the actual document
24 and the relationship in which Cerberus articulated that



WILCOX & FETZER LTD.
Registered Professional Reporters

1 they knew I had Dynamic Healthcare Solutions that I could
2 continue, that I had investments that I could continue,
3 that I had a Crowley Children's Fund 501C3 that I could
4 continue, that I had other businesses of my own which I
5 could continue.

6 Q. You didn't tell me that when I asked you the
7 question at the deposition, did you? You can read all
8 the rest of that answer.

9 A. Then you didn't ask me in a way in which I could
10 give you that response.

11 Q. My question, sir, was, "Tell me about the
12 alteration." Was that confusing to you? There was an
13 alteration from \$10,000 a month to working exclusively
14 for Cerberus.

15 A. It means that I wouldn't take other clients,
16 which I had historically done.

17 Q. You say that at that point in July the document
18 provided you could do all those other things?

19 A. In July the handshake, which was later
20 articulated in a document, permitted me to do those
21 things.

22 Q. That handshake deal continued from July until
23 November, when it was documented. Is that correct?

24 A. It took several months to get it documented.

1 That's correct.

2 Q. It continued until November, when it was
3 documented; is that correct?

4 A. Yes.

5 Q. And during that period you operated under the
6 provisions of the written agreement, which you signed in
7 November.

8 A. Generally so, yes.

9 Q. And that written agreement is this document
10 which has previously been admitted into evidence as
11 Debtors' Exhibit 1. Is that correct?

12 A. Yes.

13 THE COURT: Excuse me. I think that's one
14 of the documents that counsel for the debtor took back at
15 our earlier hearing. At a break I'm going to ask counsel
16 for the debtor to be sure to have the full complement of
17 the debtors' exhibits. Thank you.

18 Q. Let's look during the same period at what was
19 going on with Coram. Switching off of Cerberus now where
20 you have started in July and \$80,000-a-month consulting
21 arrangements by a handshake, and I want to talk about
22 Coram, beginning at about the same time you entered into
23 a consulting agreement with Coram. Is that right?

24 THE WITNESS: I'm sorry. Could you read it



WILCOX & FETZER LTD.
Registered Professional Reporters

1 back? I was looking at the document.

2 (The reporter read back as instructed.)

3 A. I believe it was in September that I entered
4 into -- I attempted to enter into a consulting
5 arrangement with the CEO of Coram.

6 Q. Well, you did, didn't you?

7 A. It was never executed, but, in fact, I operated
8 as if it had been.

9 Q. What did you get paid under that consulting
10 arrangement with Coram?

11 A. We discussed this in my deposition, and I
12 haven't gone back and had the time to look at the
13 document, but my recollection generally was that it was
14 \$40,000 a month.

15 Q. \$40,000 a month.

16 A. Some portion of it was paid up-front.

17 Q. I'm sorry?

18 A. Some portion of it was paid up-front.

19 Q. So at this point you're working, as I understand
20 it, for Cerberus for \$80,000 a month on an upside, where
21 your testimony at least has you working exclusively for
22 Cerberus and now you enter into an agreement with Coram
23 where you're providing consulting services for another
24 \$40,000 a month. Is that correct?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 MR. FRIEDMAN: Objection. Mischaracterizes
2 his testimony.

3 THE COURT: Sustained.

4 BY MR. LEVY:

5 Q. At this point, July/August, you had an
6 employment agreement by a handshake with Cerberus which
7 was paying you \$80,000 a month, plus an upside. Is that
8 right?

9 A. A potential upside if value could be created.
10 There was no value to it at the time, but yes, I was
11 being paid \$80,000 a month and had a potential upside.

12 Q. Your testimony, during your deposition at least,
13 was that you were to work exclusively for Cerberus.

14 A. I already told you, and this document that you
15 have handed me calls out the fact, that I can continue to
16 own and operate Dynamic Healthcare Solutions in the same
17 business currently engaged in by such firm to the extent
18 as and so forth.

19 Q. That document in front of you wasn't executed
20 till November, was it?

21 A. But it was part of the handshake that said that
22 I could continue to operate and own my own company, as
23 well as other things that I was doing.

24 Q. Well, why don't we look at that document, then.



WILCOX & FETZER LTD.
Registered Professional Reporters

Crowley - Cross

19

1 Look at page 3. "That document," I'm sorry, being
2 Debtors' Exhibit 1. That's the employment agreement that
3 you entered into with Cerberus as of August 1st, but you
4 didn't execute it till November. Right?

5 A. Yes.

6 Q. And this, as I think you testified, reflected
7 the handshake deal that had been made back in July with
8 Mr. Feinberg. Right?

9 A. I said generally it did.

10 Q. And you signed Debtors' Exhibit 1?

11 A. Yes, I did.

12 Q. Look, please, at paragraph 2.5 which says
13 "Duties."

14 Does Your Honor have this contract? Kind
15 of hard to read.

16 THE COURT: I have it.

17 BY MR. LEVY:

18 Q. Under "Duties," would you read the first two
19 sentences, sir.

20 A. "Executive will have such duties as are assigned
21 or delegated to the executive by the general partner or
22 Stephen Feinberg."

23 Q. Next sentence?

24 A. "The executive will devote his entire business



WILCOX & FETZER LTD.
Registered Professional Reporters

Crowley - Cross

20

1 time, attention, skill, and energy exclusively to the
2 business of the employer or any portfolio company or
3 companies" --

4 Q. "Companies as to which the executive is assigned
5 by the employer."

6 A. Thank you.

7 Q. We can agree that you are the executive. They
8 use the word "executive"?

9 A. That's me.

10 Q. And that the company is Cerberus. Right?

11 A. Cerberus is the company.

12 Q. Is the company.

13 A. Yes.

14 Q. Back to my question. I'll try and ask it
15 better. As of August, you had a verbal agreement,
16 handshake, with Cerberus, later generally reflected in
17 Exhibit D-1, which required you to devote all of your
18 time to Cerberus, and as of August you had a consulting
19 agreement with Coram that paid you an additional \$40,000
20 a month. Is that correct?

21 A. I believe in September I had a consulting
22 agreement with Coram that paid me \$40,000 a month. That
23 is correct.

24 Q. The board of directors of Coram at that time



WILCOX & FETZER LTD.
Registered Professional Reporters

1 didn't know, did they, that you were getting \$80,000 a
2 month from Cerberus?

3 A. I have no idea.

4 Q. You certainly never made any attempt to disclose
5 it, did you?

6 A. I don't know that I was asked.

7 Q. But you didn't volunteer it.

8 A. I don't know that I was asked. I was not an
9 employee of Coram in August or September or October or
10 November. I had my own company. Why would I have been
11 asked?

12 Q. You were getting \$40,000 a month from Coram,
13 weren't you?

14 A. I was hired as a consultant by the CEO and
15 president of the company to consult at his pleasure.

16 Q. In fact, you never told the board of directors
17 of Coram that you were getting \$80,000 a month from
18 Cerberus, did you?

19 A. If I had been asked, I would have told them.

20 Q. Even after you became an employee, you never
21 told them?

22 A. The board of directors knew that I had other
23 activities, which included my business relationship with
24 Cerberus. It was much discussed. In fact, my employment



WILCOX & FETZER LTD.
Registered Professional Reporters

1 agreement specifically states that I have other
2 interests, that I have other activities, that is
3 permitted. It was much discussed by the independent
4 directors. It was much discussed that I had other
5 activities. My relationship with Cerberus was known.

6 Q. But all of this what you call much discussion,
7 it was never disclosed that you were getting nearly a
8 million dollars a year, plus upside, from Cerberus, was
9 it?

10 A. Again, I have not withheld then or now anything
11 from the board. Had it been asked, I would have said it.
12 They didn't ask me. It didn't occur to me if they didn't
13 ask me.

14 Q. During this period, "this period" being
15 beginning in August, you were spending a great deal of
16 time on Coram's work, weren't you?

17 A. I was spending some time on Coram's work in
18 August of 1999. Some time, yes.

19 Q. And after November of 1999 you were spending
20 7 days a week, 15 hours a day on Coram, weren't you?

21 A. I was hired November 30th. So after November I
22 engaged in the business of Coram and gave it that level
23 of attention that I believed that it deserved and I
24 could.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. That's correct.

2 Q. There was a company called Winterland, wasn't
3 there?

4 A. Yes.

5 Q. And Winterland was a portfolio company of
6 Cerberus's, correct?

7 A. Yes.

8 Q. And you were the CEO of Winterland?

9 A. No.

10 Q. You became the CEO of Winterland?

11 A. No.

12 Q. I'm sorry. You were the boss of the CEO of
13 Winterland?

14 A. I was the chairman of Winterland.

15 Q. Sir, you testified you were the boss during your
16 deposition. Is that correct or not?

17 A. I'm the chairman of Winterland.

18 Q. I'm sorry?

19 A. I am the chairman of the board of Winterland.
20 The CEO of Winterland reports to me.

21 Q. Page 91, sir, beginning at line 6, did you
22 testify as follows:

23 "Question: Were you kind of a CEO of the
24 CEO then? We're talking about Winterland.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 "Answer: I was the chairman of the company.

2 "Question: Was there also a CEO at
3 Winterland?

4 "Answer: There was a CEO at the time.

5 "Question: And you were his boss.

6 "Answer: Yes, I was.

7 "Question: Does that relationship continue
8 today?

9 "Answer: Yes, it does."

10 Was that your testimony?

11 A. Yes.

12 Q. Now, Cerberus owned 70 percent of Winterland,
13 right?

14 A. Yes.

15 Q. And the company called Gordon Brothers owned
16 30 percent of Winterland, correct?

17 A. Cerberus owned 70 percent. Gordon owned
18 30 percent. Both were diluted by management on
19 approximately 18 percent.

20 Q. Both were equally diluted -- not equally but
21 proportionately, right?

22 A. Yes.

23 Q. Initially they were also diluted by your
24 potential 20 percent upside, correct?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. There's a difference between the dilution. So
2 it's not correct. The management options absolutely
3 diluted them. Absolutely. It was without respect to
4 performance. My options were if and only if there was a
5 gain on the sale or gain on the asset, in which the
6 principals received a preferred return, plus their
7 expenses. So mine was a potential dilution, versus
8 management which was, in fact, a dilution.

9 Q. That potential dilution, as you call it, of
10 20 percent was shared in the proportion of 70 percent
11 Cerberus, 30 percent Gordon. Right?

12 A. Yes.

13 Q. While you call it a potential return, the reason
14 you entered into the agreement is because you hoped to
15 make a lot of money on that upside, right?

16 A. Yeah.

17 Q. I'm with you.

18 A. That's why I did.

19 Q. Now, when Cerberus agreed in November that your
20 return or your upside, rather, could go to 30 percent,
21 Gordon Brothers didn't share that, did they? They
22 refused to?

23 A. I didn't ask them.

24 Q. You didn't ask them.

1 A. No.

2 Q. In any event, they didn't share it. It was all
3 Cerberus, right?

4 A. What I asked Gordon Brothers to do was to sell
5 me their position completely.

6 Q. And they said no.

7 A. I didn't like the price they offered. I tried
8 to buy their share completely, 100 percent of it.

9 Q. I simply want to make clear the point that when
10 it went from 20 percent to 30 percent, that Cerberus bore
11 that whole burden, and, whether you asked them or not,
12 the fact is that Gordon Brothers didn't bear the burden
13 of that additional 10 percent potential dilution.

14 A. Again, on Gordon Brothers, I sought to take
15 their entire position and to purchase it for roughly 7 or
16 8 million dollars. I didn't seek to potentially dilute
17 them by asking for an increase. I wanted to buy them
18 out. That's what the nature of the conversations were.

19 Q. To pin it down, you got 10 percent more from
20 Cerberus, but you did not receive more from Gordon
21 Brothers. Is that correct?

22 A. That is correct.

23 Q. Thank you. Now, to get Feinberg to agree to
24 upping your upside, you wrote him a note asking for it,



WILCOX & FETZER LTD.
Registered Professional Reporters

1 right?

2 A. No. I had been talking to him consistently all
3 along. I testified in court on direct I sent
4 Steve Feinberg a cold, unsolicited note that he rejected
5 and was never executed. Nevertheless, I had been
6 pounding on Steve consistently, because I wanted a
7 greater upside in Winterland. I think the guy felt sorry
8 for me and gave it to me.

9 Q. The question specifically is, did you write
10 Mr. Feinberg a note or a letter because you wanted more,
11 and did you do it by letter rather than do it orally
12 because you wanted more?

13 A. I have already testified that I wrote him a
14 letter, sir.

15 Q. And that was because you wanted more.

16 A. I wanted more.

17 Q. Before you wrote that letter you asked
18 Mr. Feinberg for an upside on the debt position on Coram,
19 didn't you?

20 A. Yes, I did.

21 Q. And then you wrote the letter.

22 A. I talked to the chairman of the board of Coram
23 and said I wanted an upside on the debt, and I called Don
24 and said I wanted an upside on the debt. All of them



WILCOX & FETZER LTD.
Registered Professional Reporters

1 rejected it and I went on.

2 MR. LEVY: Your Honor, we marked now a
3 document once known as Feinberg 6 and referred to it in
4 some of the depositions as Feinberg 6 but now marked
5 Equity Committee 20.

6 Q. Now, that's the letter that you wrote Feinberg
7 after you orally asked him for more. Isn't it?

8 A. I don't know the exact time frame, but I
9 certainly wrote this letter.

10 Q. Perhaps I can refresh your recollection, sir, by
11 asking you to look at page 103 of your deposition. I'm
12 going to start at line 12. Mr. Friedman says, "Let him
13 answer again. Repeat the answer. That's fine."

14 I said, "All right."

15 And then you said, "I had asked that I
16 receive an upside on the debt position at Coram.

17 "Question: Before you wrote Feinberg
18 Exhibit 6 did you make that request?

19 "Answer: I don't know when it was.

20 "Question: Look at it and tell me. Most
21 likely before you wrote the letter?

22 "Answer: Yes."

23 Did you give that testimony?

24 A. Yes. I can read.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. Does that refresh your recollection,

2 Mr. Crowley?

3 A. No, it doesn't. I said then and I'm telling you
4 now I don't know when it was.

5 Q. Let's take a look at Feinberg Exhibit 6. You
6 wrote it?

7 A. I wrote it.

8 Q. And you sent it on November 12 to Mr. Feinberg.

9 A. The letter is written on the 12th.

10 Q. In fact, if you look at the third page, you
11 faxed it. That has Bates No. 1349. From you to
12 Mr. Neporent, correct?

13 A. My secretary faxed it on November 12. I can see
14 that.

15 Q. You know Mr. Neporent to be the chief operating
16 officer and general counsel of Cerberus, right?

17 A. I do know that.

18 Q. Now, let's look at that letter. First of all,
19 you say, "The purpose of this note is to provide both of
20 us with a record that we can both retain for our private
21 records." Do you see that?

22 A. I do.

23 Q. That suggests to me that you wanted him to keep
24 it private. Does that suggest that to you?



1 A. I was not an employee of Coram. I was
2 negotiating with Coram. This letter that went to
3 Steve Feinberg was not asked -- or it was unsolicited.
4 It was a cold document sent by me without an awareness by
5 Mr. Feinberg or Cerberus that it was coming. And I wrote
6 not knowing that I would ever become an employee of
7 Coram's seeking a greater upside.

8 Q. Mr. Crowley, I thought you just testified, and
9 perhaps I misunderstood, that you made the request before
10 you sent the letter. So it wasn't a cold proposal. Was
11 it?

12 A. No. You mischaracterized what I said, sir.

13 Q. How is that? Let's go back to page 103, if you
14 like.

15 A. Let's go back to what I said earlier, and that
16 is, as I got into Winterland, I found, as it is today, a
17 company that is overleveraged, struggling, marginal,
18 unprofitable, lacking cash, that is significantly in
19 disarray, and that my activity level was more in an
20 operating capacity in factoring, marketing, purchasing
21 materials, systems, directly with the subordinates, and I
22 asked Steve Feinberg for more upside, recognizing that it
23 wasn't simply going to be simply chairman or CEO of CEOs.
24 I was, in part, running this.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. More upside on Winterland?

2 A. That's what I asked for.

3 Q. You asked in here for upside on Coram's debt
4 position. Didn't you? Isn't that what that says?

5 A. Again, I had talked to Don Amaral. I told him I
6 was going to seek some upside on the Goldman, Foothill,
7 and Cerberus debt position. He was uncomfortable with
8 it. I talked to Stephen Feinberg and asked for an upside
9 on the debt position. He was uncomfortable with it. I
10 did not receive it. Nor did I receive an affirmation on
11 this document. It was never executed.

12 Q. Well, Mr. Amaral did tell you, according to this
13 letter, that there's no problem with Cerberus giving you
14 an upside on Cerberus's equity in Coram. Right? Isn't
15 that what it says?

16 A. That's what it said. The facade is Cerberus
17 didn't have any equity in Coram.

18 Q. Well, why didn't you say it?

19 A. You know, this is a year old. I haven't got a
20 perfect recollection, except to say that I was wishing to
21 receive more upside in what I viewed as a debt company if
22 I could make it work. I didn't get it. The board wasn't
23 comfortable with it. Cerberus wasn't comfortable with
24 it. It never got executed. It was a cold, unsolicited



WILCOX & FETZER LTD.
Registered Professional Reporters

Crowley - Cross

40

1 letter and I went on when they objected to it.

2 Q. If this was a cold, unsolicited letter, how do
3 you explain, sir, your testimony on page 103 that you
4 made a request of Mr. Feinberg for this probably before
5 you sent the letter?

6 MR. FRIEDMAN: Your Honor, it's been asked
7 and answered and --

8 THE COURT: Sustained.

9 MR. LEVY: Right at the heart --

10 THE COURT: Sustained. He's testified.

11 BY MR. LEVY:

12 Q. You say this was a proposal, "this" being
13 Feinberg Exhibit 6?

14 A. I believe you exhaustively asked me this in
15 deposition. It was a proposal, sir.

16 Q. Mr. Crowley, Her Honor was not at the
17 deposition. I do need to ask you the question.

18 THE COURT: Please answer the question.

19 A. I apologize. It was an unsolicited proposal,
20 yes, sir.

21 Q. Does it say anywhere in here anything that would
22 indicate to you that this was a proposal rather than an
23 attempt to reflect in writing an agreement that you had
24 already reached, and, if so, please point it out?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. Yes. This is in a statement form. If I had had
2 an agreement, instead of saying you agree, I would have
3 said you agreed. You agreed to increase. You, Cerberus,
4 agreed to increase. I didn't say it, I agreed. I didn't
5 say it because we hadn't had an agreement. It wasn't
6 agreed to. It was a condition windage, threw it in the
7 air to see if I could have got anything in a situation,
8 actually, where it's remote that I could get any value
9 from Winterland anyhow.

10 Q. Let's explore that. Let's look at the last
11 paragraph of the letter where you say, "By signing below,
12 we both indicate that this reflects our understanding."
13 Do you see that?

14 A. I see it, yes.

15 Q. You signed below, didn't you? Didn't you sign
16 below?

17 A. I signed below, yes.

18 Q. Doesn't that indicate that that reflected what
19 at least your understanding was on the day you wrote it?

20 A. No. This was not an agreement. You can
21 characterize it any way you wish, but we did not have a
22 meeting of the minds or an agreement. It never got
23 executed. It got rejected.

24 Q. What was the reason, sir, why under what you



WILCOX & FETZER LTD.
Registered Professional Reporters

1 call a proposal you were proposing to Mr. Feinberg that
2 he increase the economics on Winterland -- I'm looking,
3 of course, at the third paragraph -- "to provide for an
4 upside that is equal to that which I would otherwise have
5 been able to receive, if any, for creating operational
6 and financial improvements resulting in EBITDA at Coram"?
7 Why would you do that?

8 A. That was my idea at the time, but, again, it was
9 rejected. It was my idea. It met on deaf ears
10 everywhere it went. I didn't get that.

11 Q. I wonder if you could confine your answer to
12 what your intent was. We know that you claim it was
13 rejected. My question is, why did you in what you call a
14 proposal ask that you be compensated for operational and
15 financial improvements in EBITDA at Coram by increasing
16 the economics on a totally unrelated company?

17 A. I had been bargaining with Don Amaral
18 considerably, who's the chairman of Coram. I felt that
19 at the time in November there that I was not going to
20 come to an amicable agreement with them. So early in
21 this process I was testing to see if there were
22 alternatives, and this was rejected by both sides. That
23 was the thinking.

24 Q. Again, we know it was rejected. In looking at



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. I have the potential of it. It's worthless
2 today.

3 Q. So November 12 you asked for 40 percent measured
4 by Coram. You testified Coram won't give it to you. Six
5 days letter you enter into a three-year contract with
6 Coram, and seven days later Cerberus gives you what you
7 asked for in the November 12 letter. Are those facts
8 correct?

9 A. No.

10 Q. You're right. You didn't get 40 percent. You
11 only got 30 percent.

12 A. I entered into the agreement with Cerberus with
13 a handshake in July effective August 1. Took about four
14 months to document. Those are factually items you're
15 leaving out. November 12 letter, again, was an
16 unsolicited, cold, threw-it-in-the-air letter. It was
17 rejected. I'm sorry that it took four months for
18 Cerberus to document their agreement with me. That
19 happened in November. My contract with Coram on
20 November 18 specifically spells out that I can operate my
21 own company, Dynamic Healthcare, that I have other
22 business interests. It was known, talked about, and in
23 the document. Everybody knew it.

24 Q. Let me look again at your throw-it-in-the-air



1 EC 20. Whether you threw it in the air or not, it states
2 as a fact to Mr. Feinberg that "our current deal provides
3 a 20 percent share of the net gain on Winterland."
4 20 percent, right? You have to answer audibly, sir.

5 A. Yes.

6 Q. You testified that that was rejected, but a week
7 later you get 30 percent of the upside on Winterland from
8 Cerberus. Isn't that a correct statement?

9 A. Actually, in my November 12 letter talks about
10 an upside that goes up and down relative to how I do for
11 the Coram people. What I ended up with was a potential
12 that increased by 10 percent that has no relationship to
13 Coram whatsoever. So Winterland tanks, I don't get
14 anything. If Winterland should go through the roof, I
15 would get something. None of that relates to how Coram
16 does. It's completely bifurcated. This letter talks
17 about it relative to operating financial improvement
18 resulting in EBITDA Coram. What I ended up with has
19 absolutely nothing to do with Coram at all. It has only
20 to do with Winterland. So it's not correct.

21 Q. We will look at that, but isn't it also true
22 that at this point on November 12, this 20 percent upside
23 was split 70/30 between Cerberus and Gordon, but when you
24 got to November 19th, Gordon wouldn't give you that



WILCOX & FETZER LTD.
Registered Professional Reporters

1 MR. LEVY: Would you read the question
2 again?

3 (The reporter read back as instructed.)

4 THE WITNESS: No.

5 BY MR. LEVY:

6 Q. During this period interest fell due on your
7 debt to the noteholders, correct? "This period" being
8 say from the beginning of the year up through the filing
9 of the bankruptcy.

10 A. I'm sure there was an interest payment that was
11 due.

12 Q. And that interest payment under the terms of the
13 securities exchange agreement gave you the option to pay
14 it either in cash or a payment in kind, or PIK. Isn't
15 that right?

16 A. It may have. I never read it.

17 Q. It could have. Isn't that right?

18 A. It could have.

19 Q. In fact, you paid, was it, six-and-a-half
20 million dollars this year in cash in interest to the
21 noteholders, correct?

22 A. We made an interest payment in cash, that's
23 certain.

24 Q. Did you check with anyone to see whether you had



WILCOX & FETZER LTD.
Registered Professional Reporters

1 the ability to conserve cash by giving them PIK payments,
2 or did you just say I'll pay them in cash? Was that
3 question difficult, sir?

4 A. On the surface it's absurd, but beyond the
5 fact --

6 Q. I'm sorry?

7 A. I said on the surface it's absurd. The company
8 had a note agreement. The company had the cash. The
9 company had the obligation. The company paid the
10 interest payment.

11 Q. Well, Mr. Crowley, they didn't have the
12 obligation to pay it in cash, did they? They had the
13 obligation to pay it either by cash or by adding it to
14 the balance of the principal. Correct?

15 A. I would not have added it willingly to the
16 balance of the principal and punish Coram by increasing
17 the size of its debts and increasing the demand against
18 its cash flow. It would not have seemed logical to me,
19 as I was trying to decrease the amount of damage being
20 done to the company.

21 Q. During this period you were running out of cash,
22 weren't you?

23 A. During this period of time the company had made
24 an effort to decrease its accounts receivable, which were



WILCOX & FETZER LTD.
Registered Professional Reporters

1 aged bills, and was having some success in bringing the
2 receivables down. During this period of time the company
3 had made an effort to reduce its inventory which relieved
4 the demand for cash, and the generation of this modest
5 amount of excess cash permitted the company to make an
6 interest payment.

7 Q. You have done a lot of workouts, haven't you?

8 A. I have done some workouts, yes.

9 Q. Isn't the usual strategic alternative for a
10 company in trouble to conserve cash when it can without
11 default, without thereby causing a default?

12 A. It's usually not the management's process to
13 stiff the debtholders when it has the cash to make an
14 interest payment.

15 Q. But it was here, sir.

16 A. That's an opinion that you're rendering, sir.

17 Q. Isn't that what you stated, that you had the
18 option or could have had the option to pay by PIK rather
19 than cash?

20 A. I may have had the option to pay in kind versus
21 in cash, and I chose to make the interest payment,
22 because the company could at that time.

23 MR. LEVY: Excuse me, Your Honor. May I
24 take a moment?

